**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL WRIT PETITION NO. 5 OF 2006**

Avelino J. Pinto,
Ucassaim. ... Petitioner

versus

Subodh Shetye,
Mapusa Goa. ... Respondent

Mr. S. Vales, Advocate for the Petitioner.

**CORAM : N. A. BRITTO, J.**

**DATE : 23RD MARCH, 2006.**

**P.C.:-**

Heard Mr. S. Vales, the learned Counsel on behalf of the petitioner who is an accused in C.C.No.327/99/E filed against him under Section 138 of the Negotiable Instruments Act, 1881. It appears that the applicant/accused applied for recalling of process issued against him but his application came to be rejected by Order dated 25-2-2003 of the learned J.M.F.C., Mapusa. As against the said Order dated 25-2-2003, the applicant filed Criminal Revision Application and since the said

Criminal Revision Application was filed after a delay of about two months, the applicant filed an application for condonation of delay, being Criminal Miscellaneous Application No.28/2003. When the said Criminal Miscellaneous Application No.28/2003 came up for hearing on 26-3-2004, the applicant nor his Advocate were present before the learned Sessions Judge and, therefore, the learned Sessions Judge, after perusing the records of the case proceeded to dismiss the said application for condonation of delay. In dismissing the said application, the learned Sessions Judge noted that there was a delay of two months for filing the application for condonation of delay and although the applicant stated that he was sick and as such was unable to get the copy of the certified copy in time and also that the applicant had also misplaced some of the important documents, the applicant had not supported the said pleas taken by him by producing any medical certificate. Mr. Vales, the learned Counsel on behalf of the applicant was repeatedly asked to point out any medical certificate which the applicant had produced before the learned Sessions Judge in support of the cause for delay pleaded by him. Mr. Vales has been unable to make any categorical statement that the applicant/accused had

produced any medical certificate to support his illness for any period of the delay of the said two months. In such a situation, in my view, the Order dated 26-3-2004 cannot be faulted.

I find there is no merit in this petition and hence, the same is hereby dismissed.

**N. A. BRITTO, J.**

**RD**